

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

No. C 09-4503 SI

Plaintiff,

**ORDER GRANTING IN PART MOTION  
BY COMMUNITIES FOR A BETTER  
ENVIRONMENT FOR PERMISSIVE  
JOINDER OF BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT AND JACK  
BROADBENT AS DEFENDANTS**

COMMUNITIES FOR A BETTER  
ENVIRONMENT,

Intervenor Plaintiff,

v.

PACIFIC GAS & ELECTRIC,

Defendant.

---

Pursuant to Federal Rule of Civil Procedure 20, Intervenor plaintiff Communities for a Better Environment (“CBE”) has moved to permissively join as defendants the Bay Area Air Quality Management District (“BAAQMD” or “Air District”) and Jack Broadbent, in his official capacity as Air Pollution Control Officer of the Air District. Pursuant to Civil Local Rule 7-1(b), the Court VACATES the May 14, 2010 hearing on the motion. The case management conference scheduled for 3:00 pm on May 14, 2010 remains on calendar.

CBE contends that joinder is appropriate because CBE’s proposed claims against these new defendants arise out of the same transactions and occurrences as CBE’s claims against PG&E. CBE’s claims against PG&E (as well as the EPA’s claims against PG&E) allege that PG&E is in violation of the Clean Air Act because PG&E failed to comply with the preconstruction requirements of the Prevention of Significant Deterioration (“PSD”) program in PG&E’s construction and operation of the Gateway power plant. CBE alleges that the Air District issued a PSD permit to PG&E’s predecessor

1 in interest, Mirant Delta, LLC, in July 2001 for a power plant designed for the same site where the  
2 Gateway plant now operates; that Mirant's PSD permit expired; and that PG&E , the new owner of the  
3 plant, finished construction and began operating the power plant without a new PSD permit to replace  
4 the expired permit. CBE's proposed new claims against BAAQMD and Mr. Broadbent allege that the  
5 Air District has a duty to administer the PSD program consistent with the Clean Air Act, and that despite  
6 the expiration of the Mirant permit, the Air District purported to renew the permit in 2005 and 2007 in  
7 violation of the requirements of the Clean Air Act.

8       The EPA<sup>1</sup> and PG&E do not oppose the joinder of BAAQMD and Mr. Broadbent, but they both  
9 express concern that CBE's proposed amended complaint goes beyond the scope of the underlying  
10 lawsuit by alleging violations of the Clean Air Act, and seeking relief with regard to, facilities other than  
11 the Gateway power plant. The EPA and PG&E assert that the potential breadth of CBE's claims will  
12 complicate and delay this litigation and result in time consuming, expensive and unnecessary discovery.

13       The Court finds that the concerns raised by the EPA and PG&E are valid, and that it is  
14 appropriate to limit CBE's claims against the new defendants to those involving PG&E's Gateway  
15 power plant. As so limited, the Court finds that the proposed claims against BAAQMD and Mr.  
16 Broadbent arise out of the same transactions and occurrences as the underlying claims, and CBE's  
17 motion for permissive joinder is GRANTED IN PART. (Docket No. 33). CBE shall file a first  
18 amended complaint in intervention, limited to claims regarding the Gateway power plant, no later than  
19 **May 17, 2010.**

20

21

**IT IS SO ORDERED.**

22

23

Dated: May 12, 2010

24

25

26

27

<sup>1</sup> The EPA states that it does not object to joinder at this time, but that it reserves its rights and does not waive any future arguments, claims, or actions relating to BAAQMD's participation in this case.



SUSAN ILLSTON  
United States District Judge